

AN  
E S S A Y  
UPON THE  
ORIGINAL  
AND  
DESIGN  
OF  
MAGISTRACY.

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*By one who equally hates Rebellion and Tyranny.*

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ORIGINAL  
DESIGN  
MAGISTRACY

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Essay upon the Original, and Design of  
MAGISTRACY  
OR  
A Modest Vindication of the late Proceedings in  
E N G L A N D

**A**S the Right knowledge of the *Supream Magistrate*, is the *Basis* and *Foundation* of our *Submissions*, and the cause of all the Blessings, which flow from a well-tempered *Government*, so the *Misapprehensions* and false *Notions* that many *People*, either through *Ignorance*, or the prejudice of *Education*, frame to themselves of his *Power*, are no less remarkable for their contrary effects.

We fall into two *Extremes* equally *Dangerous*, if either we give the *People* so much *Liberty*, that the *Magistrate* cannot go about these great *Ends*, for which he was designed, but like a *Weather-Cock*, is turned about at the pleasure of the *Mobile*; or such a boundless power to the *Magistrate*, as makes the *Property* of the *Subject* altogether *Precarious*, depending upon the *Caprice* of an insatiable *Monarch*.

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To keep a just *Balance*, we must consider *Magistracy* as it was first Instituted by *God Almighty*, before it was depraved by the Ambition, Pride, and Avarice of those who were invested in it. So that in its Original, it may be defined, a Power delegated from God, for maintaining Order, rewarding the Vertues, and punishing the Crimes of Mankind; The Application of which power is left free to any independent People or Nation.

It cannot be doubted, but that God as Creator of all things, might in his own Person have Exercised a *Sovereign Power* over all his *Creatures*, which since he was not pleased to do; He thought fit in His infinite *Wisdom* to appoint his *Lieutenants* here on *Earth*, to whom he Communicates some Rays of his *Divine Majestie*, both to beget a greater Reverence for their Persons, and procure a chearful Obedience from those that were to be Subject; So that, the profound Deference and blind Submission, which *Millions* of Men pay to a *Mortal*; perhaps subject to as many Infirmities as the most part of those he Rules over, can be ascribed to nothing else but the firm Perswasion of a *Divine Institution*; But that we may the more admire the Goodness of God in ordaining *Magistracie*, he hath no less proposed Mans happiness then his own Glory, that we might find it our Interest as well as Duty in Obeying; For tho Man was born free, And consequently by Nature desirous of Liberty, yet an unbounded freedom, could have done him very little Service in a natural State, when Innocency was no protection from the oppression of the Stronger; But Rapines, Violence and Murder were the chief wayes of acquiring Right, in this Universal *Chaos*, where *homo* was *homini* *Lupus*, nothing was thought *Unlawful*, that Ambition, Malice or Cruelty could propose, so that the *Weaker* were driven to a necessity of uniting their Forces against the *Stronger*. Then began they to Erect *Societies* and make *Laws* for Regulating them, the executing of which Laws was Committed to one or more Persons, as the *Major* part of the Society thought fit to Trust, who had the Name of *Captain*, *General* or *King*; It was He who led them out to *Battel*, who disposed of *Prises*, and punished *Malefactors*; His Commands were easily obeyed becaule but few, and all just, Honest, and profitable. These had not Learned the *Arcana Imperij*, or secret ways to enslave their

their People, but their Eminent Virtue and singular Valour, both procured their Dignity and maintained them in it, and having no *Sycophant Flatterers* about them to abuse their easie Credulity, they had not forgot that the Peoples Liberty was resigned for no other end, but for obtaining a greater happiness under their Protection, then what they could have proposed if every Individual had retained it in his own Person.

There is no other Original of *Magistracie* to be Learned from *Sacred* or *Profane Historie*, for tho the *Patriarchs* had the Government of their own Families, (which by reason of their long Age were very numerous,) yet that right was derived from the Law of Nature and not from any *Civil Obligation*; They had for the most part no fixt Habitation, but lived as *Strangers* and *Sojourners* by the favour of other Princes, and were never model'd into a *Common wealth*.

When *Dom nions* were enlarged and *Empires* began to be erected, different forms of Government were established according to the various inclinations of People, when the *Conqueror* gave Laws to the *Conquered* it was called *Despotick*; But when a free People did enter into a Contract and gave up their Liberty on certain Conditions, it was called a *Limited Government*, and these conditions the Fundamental Laws.

This *Sovereignty* was either entailed upon a particular Family for considerable services done to the *Common wealth*, or it was only to be held during Life whence Succession and Election.

There is a *Majestie* in every free State, which is nothing else but an Independent Power upon Earth tyed to no Laws but these of God; these of Nature and Nations, and the Fundamental Laws of a Kingdom.

This *Majesty* is either Real, or Personal, *Real* is that Independencie which every free State hath in Relation to one another, *Personal*, that Right when its lodged in a particular Person, which tho it be inseparable from the *Sovereign Power* for the greater Splendour, yet it may be violate when the *Real* remains entire, otherwise the freedom and Independencie of a Nation would be extinct by the Death or Captivity of the Prince.

To *Majesty* or *Sovereign Power*, are annexed the *Regalia* or *Regal Rights*.

Rights which are less or more, according to the measure of Liberty given from, or reserved to the People or the Representatives at the first Constitution; For instance, a King may have power to make Warr and Peace, and yet cannot raise Money, the *Legislative Power* may be also divided as its in *England* betwixt King and *Parliament*, and generally in all mixt *Governments*; For that Maxim, That *jura Majestatis sunt indivisa*, does only take place in an *Absolute Monarchy*.

That Power which the People reserveth from the *Sovereign* is called *Liberty*, and its either Tacite or Expres; Tacite Liberty is the Exemption of such things as cannot fall under the Cognisance of the *Supreme Power*, which may be reduced to three. 1<sup>st</sup>. Religion or the Empire over the Conscience, which belongs only to *God Almighty*. 2<sup>dly</sup>. The Power of *Life and Death* till we forfeit them by the *Divine Law*, or *Municipal Laws* of a *Kingdom*. 3<sup>dly</sup>. Our *Goods and Heritages*, which cannot be taken from us without a *Judicial Process*; or when the good of the *Common-wealth* we live in requires a share of them. These three Priviledges were ever reserved in the most *Ample Resignation of Liberty*; The First we cannot give away because not ours, we have right to the second as Men, who are to be Governed by Reason; to the Third as Members of a *Societie* or *Common-wealth*.

*Express Liberty* is a *Stipulation*, whereby somethings are by express paction exim'd from the Power of the *Sovereign*, by the People or their Representatives, which Reservations are called Priviledges; and are either thus established by Contract and Agreement at the first Constitution, or are afterwards granted by Princes, when they would either oblige or gratifie their People, as was the *Magna Charta* in *England*, and *Edict of Nantz* in *France*, or when they desire any favour from them, as was the *Golden bull*, wherein the Emperour *Charles the 4<sup>th</sup>*. granted considerable Immunities to the *Electors*, to engage them to chuse the stupid *Venfiasius* his Son, Successor in the *Empire*.

This Property of the Subject hath ever been the *Eye fire* of *Monarchs*, tho he has as just a claim to it, as these have to their *Crowns*, and whoever goes about to subvert it dissolves the Constitution, and Forefaults his own Title; since the same Laws that bestowed this at  
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the same time secured that, and maintaining the one was made an inseparable condition of possessing the other. Neither can a Rape committed on our Liberty, be excused upon pretence that Authority is derived from Heaven. For the *Great Sovereign* of the *Universe*, ordained *Magistracie* for the preservation not the destruction of Mankind; and he never sent down any person or Family from Heaven with a Commission to enslave a People or Nation, to whom the Application of the *Civil power* was left Absolutlie free: So that they might bestow it on whom and after what manner they pleased; For tho God loves order, yet he never approved of Tyranny and Oppression, and he who is all Justice and Mercy can never be supposed to Authorize what is contrary to both. So that whosoever Acts beyond his Commission and destroys the *Flock* instead of protecting it. Is to far from being Gods *Vicegerent*, that he is to be lookt on as the Common Enemy of Mankind.

The Violation of the Subjects property is called *Tyranny*, A name which at first did only signifie the *Regal power*, but when Liberty began to be oppressed through the Ambition, Wickedness or Evil management of the Governours it was made use of, to denot the excess of power.

There are two sorts of *Tyrants*, those in *Title* and those in *Administration of the Government*. The first sort is he, who Usurps the *Crown* without any Title or just pretence, as did *Oliver Cromwel* in *England*, of the other, one who hath a just right to the *Crown* but postponing the publick good, Acts *Arbitrarily* and contrary to Law: Such a *Tyrant* was *Philip* the Second of *Spain*.

The want of a Title or a Bad one may be supplied by prescription, or the subsequent consent of the people, to which perhaps the most part of *Princes* must at last recurr, unless they would derive their *Pedegree* from one of the Sons of *Noah*, and instruct an uninterrupted Succession ever since.

*Tyranny* is the most miserable condition a *common-wealth* can be in, it dissolves the Union betwixt *King* and *Subject*, and exposes both to all the miseries that attend a *civil Warr*, and to the hazard of falling under a *Forreign power*; Yea even tho a *Tyrrant* should be successfull in his Attempt, yet is he as farr from his happiness as ever, for be-  
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sides the inward remorse that incessantly gnawes his Conscience he suspects all Men, fears every thing, and is most justly hated by all, so that they did not Represent a Tyrant ill, who drew him sitting under a Canopy of State feasting in great Rior, with a naked Sword hanging over his Head.

What Remedic is there then against so great an Evil, are we tamely to subject our Necks to a Yoke so insupportable to the more refined sort of Men, or are we to resist the *Supreme Magistrate* and Reclaim him by Arms when other means prove ineffectual? The difficulty is great and each opinion hath had its Champion who writ Volumes in defence of their cause.

The horrid Paricide of King *Charles the 1.* in the middle of this Age was with great heat and zeal defended by *Milton*, and Impugned by the Learned *Salmasius*, who being a stranger to our Constitution, and the Transactions of our Country, ( I speak it with Reverence to so great a Man, ) did but weakly defend so good a Cause in endeavouring to prove, that *Tyranny* was not to be resisted, whereas he should have Evinced ( as easily he might ) that *Charles the 1st.* was a good Prince and no Tyrant.

The present Revolutions in *England* revives the dispute and engages me contrary to my humour, to Impart my thoughts to the publick, with no other design then to contribute my m an endeavours for vindicating the Nations Honour from the heavie Imputations of Treason and Rebellion, and if I can make out that Resistance in some case is Lawful, I doubt not but I shall be easily able to Demonstrate that the present taking up Arms by the *Nobility* and *Gentry* of *England* in Defence of their Religion, Laws and Liberties, is both just and necessary.

There are three Degrees of Resistance, The first is the taking up Arms against the *Civil Magistrate*, The second is, The Deposing him, and shakeing off our *Allegiance*, The third proceeds to the inflicting of capital punishment: Which last seems inhumane, because GOD has placed a certain Sacredness in the Person of Princes, so that none can touch the LORDS Anointed, and be guiltless, and the depriving them off their Crowns, is a great enough punishment, and our injuries are sufficiently repaired, when we are out of the hazard of being any  
more



more obnoxious to them ; The other two may be allowed of, providing the Remedies be applied by fit persons, after a due manner, and with such caution as a matter of so great importance does require.

First, By fit persons, as the Nobility, Gentry, and other Representatives of the Nation, who, as they are most concerned in the Laws, are supposed to understand them, and consequently, are the best Judges of Liberty. And they are persons of so much Honour that it were a piece of ill Breeding, to suspect them of partiality. Secondly, The Tyranny must be Evident and Manifest, some few Tyrannical Acts do not constitute Tyrannie: private injuries must be suffered, rather than hazard the *publick peace*, there must be a wilful *subversion of the Laws*, not those of lesser moment, but such as shake the very Foundations of Government. *David's* Murder and Adultery were very Arbitrary and Tyrannical, and yet did not make him a Tyrant, for Humane Frailty is still to be indulged, seeing on this side of time perfection is not to be expected.

Thirdly, This is a violent Remedy, and consequently, should be the last, it ought to be gone about with the greatest Deliberation, and circumspection imaginable; when Addresses, petitions, Supplications, and such gentle Methods prove ineffectual.

Fourthly, The *Common wealth* must be in such Danger, that the whole Fabrick would otherwise be Dissolved and Overturned.

Lastly, The effectuating of the Design must be certain, otherwise, we fall into a worse Evil, then what we seek to shun, for *Confusion* and *Anarchy* are worse than *Tyranny*, and a wounded head is better than none at all.

What is objected against this Opinion from the *Old and New Testament*, is very judiciously refuted by the Author of the *Inquiry into the measures of Submission*.

The second Argument is taken from the *Oath of Allegiance*, which Subjects swear to their Prince, whereby they engage never to rise in Arms against him. To which it is answered, that this Oath is accessory to the Contract agreed on betwixt the King and People, and so must follow the nature of its *principle*. The Nature of all Contracts is *Obligatory* on both parties, so that if one of the parties fail in the performing his part, the other is loosed from his Obligation

gation. As its in this case, the People Devolve the power on the Prince upon certain conditions, expressly specified; The accepting of a Crown on such Terms, binds the Prince to perform the Conditions; if he does not perform them he in effect renounces his Right, and tacitely consents that it return to those who bestowed it.

Lawyers say, that Contracts can only oblige Equals, and therefore no pactiō betwixt King and Subject can be binding, there is no force in this Argument, if we advert that when this Stipulation was made, the Prince and Subjects were equall and were only distinguished after the power was conferred.

*Thirdly,* They instance that this does not bind the Successor, to which is answer'd, that the Prince engages for himself and Successors, who if they would reap the advantage from their *Predecessors*, must have also the disadvantage of being tyed to the same Rules they were adstricted to. But for the further security none is admitted to the Government till they take the *Coronation Oath*.

*Fourthly,* They upbraid us with the example of the *Primitive Christians*, who suffered the persecution of *Heathen Emperours*, with the greatest Moderation and Patience: I do admire as well as they the Constancy, patience, and other Virtues, which these Holy Men were endued with, but their case and ours is quite different. *Paganisme* at that time was established by Law and *Christianity* condemned, the Professors whereof suffered as the Disturbers of the publick Peace, but blessed be GOD, the Law is now on our side, and our Religion is become a great part of our Property, and the peace of our Country, does very much depend on the preservation of it, besides if the *Christian Religion* had been propagate by Arms, its Worth had been diminished, and the Reputation of the first Founders of *Christianity* had very much suffered, whereas the Morality and Justice of all its Precepts, the Holiness and Purity of its Doctrine, were of sufficient Efficacy to recommend it, and the Constancy and Resolution, with which the first *Christians* suffered Martyrdom; were strong Motives to convince the *Pagan World* of the truth of it. But in our *Christian common Wealth* where there are no more *Heathens* to convert, as the robbing us of our Religion, would be the highest Act of injustice; So the parting with it tamely, would argue the greatest Stupidity and unconcernedness that men can be capable of.

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The only Difficulty that remains, is, who shall be Judge of the *Princes* Actions, to know when he is a *Tyrant* and when not, if it were allowed to the *Prince Himself*, He would be too partial, if we should constitute a Right in the People, they would be too apt to misconstrue the *Princes* Actions: (which should ever receive the most Benign Interpretation that the Subject can admit.) So that to shun both Inconveniencies, the Controversie must be decided by the Laws of the Kingdom. There is just such a Plea betwixt the *Church of Rome*, and the *Protestants* concerning a *Judge of Controversies*, they contend for the *Pope as Christs Vicar*; and reject the *Scriptures*, which we believe are the only *Rule of Faith*; and that in them all things which relate to *Salvation* are clearly set down, so that these of the meanest capacities may easily understand them.

In a *Politic State* the *Supreme Magistrate* is Sworn to Rule according to the Fundamental Laws of the Kingdom, which we must suppose are known both to King and People, because they are a Rule to direct the Government of the one, and a measure of the obedience of the other, and were fairly enacted at the first constitution. Its true indeed, that if a Law made by the Civil Power contain any obscurity, The sole power of Interpreting that Law belongs to the Lawgivers; but we must imagine the Fundamental Laws full of perspicuity, and except there be a notorious Violation of them, resistance can never be lawful.

What has been said on this general Head, will not answer the design of this paper, if it cannot be applied to the present State of Affairs in *England*: For it is of no purpose to prove that Tyranny is to be resisted by Arms, unless we make it appear that the *English Government* had altogether Degenerate into Tyranny, and that the taking up of Arms under the Auspicious conduct of his Highness the *Prince of Orange*, was no rash Act, but done after mature Deliberation, and withal the circumspection that an Affair of so great Importance did require.

The great and earnest endeavours to have the *Bill of Exclusion* pass, did sufficiently evince, what fears and Jealousies the Parliament had of the danger to which their Religion and Liberties would necessarily be exposed under a *Popish Successor*: His *Majesties* behaviour since

he came to the Crown has clearly demonstrate that these Fears were not groundless, for not being content to Introduce the *Popish Religion* so much contraire to Law, He hath enleavoured to alter the whole frame of the Constitution, and swallow up all our Liberties and Priviledges in an *Arbitrary and Despotick Power*.

1. The first step was made against the freedom of *Parliaments*, (which makes up a great part of the Government by their having a share of the *Legislative Power* lodged in them) by their Issuing out *Quo-warranto's* against all the *Burghs* and *Corporations* in *England*, the most part of them either through fear or force did surrender their *Charters* to the King, who placed such *Magistrates* in them as he was most assured of, and by this means did altogether invert the freedom of Election.

2. Nothing can be more contrary to Law, then the erecting of *Seminaries* of *Priests* and *Jesuits* in all the *Capital Cities* of his *Dominions*, yea such confidence hath he reposed in that Order, that he hath committed the direction of his Conscience to one of its Fathers, and was not ashamed to own himself a son of the Society.

3. His pretence to a *Dispensing Power*, was no mean breach of his *Coronation Oath*, for by it he *Usurped* the whole *Legislative Power*; And would have imposed on the People (in procuring the Votes of the *Twelve Mercenary Judges*) if they had not wisely foreseen the dangerous consequences, and feared that his *Majesty* would farther oblige his *Roman Catholick Subjects* by Repealing all the *Laws* that were Enacted in Favours of the *Protestant Religion*.

It was by vertue of this *Dispensing Power*, that the *Ecclesiastick Commission* was established, the *Bishop of London* suspended, the *Fellows of Magdalen Colledge* turned out; And because the *Bishops of England* would not so far justify his *Illegal Preiences*, as to cause their Clergy read the *Declaration for Liberty of Conscience* from their *Pulpits*, they quickly saw all the fair promises made to them *Evanish*, and the *Loyal Church of England* was first branded with the infamous Character of *Trumpeters of Rebellion*, and afterwards treated as the worst of *Criminals*, a very bad recompense for that great zeal, with which they had ever Preached up the Impracticable Doctrine of *Non Resistance*.

4. In Prosecution of the Blessed Design of Reducing *Hereticks* to the

the *See of Rome*, all ways were taken to discourage *Protestants*, who were not only debarred from Offices and Imployments of any Trust, unless upon such Conditions as the Court pleased to Impose, but were even turned out of these that had been *Heritable* to their Families; and a great part of the *Militia* was intrusted to *Roman Catholicicks*, of purpose to *Over awe* the *Parliaments*, in case the next Assembly should have proved stubborn.

5. Tho by many Laws the holding correspondance any way with *Rome* be declared high Treason, yet hath his *Majestie* had his Resident there, and received his *Nuncio* here, to the great scandal of all good *Protestants*, and true hearted *Englishmen*; For it is in effect a Subjecting the Kingdom to a Slavery, from which our Ancestors had most gloriously delivered us. These things were acted in face of the Sun, and none can deny them without renouncing the most comfortable of all his senses: Yea, the King himself did sufficiently acknowledge them, by his sudden restoring the City Charters, *Magdalan Colledge*, and some other of the grosser sort of Abuses, upon the first Information he got of the *Princes Declaration*.

The Kings old Age, and the fair Prospect of a *Protestant Successor*, made us suffer these things patiently, because we hoped to be very shortly delivered from them, but to despair us, and cut off all our hopes, and to punish the *Prince and Princess of Orange*, for refusing to comply with the Kings Will, there is a sudden rumour spread of the Queens being with Child, which as it did allarm the whole Kingdom, so it made these who were most concerned be at some pains to be assured of the truth of it, and yet after their most exact enquiry their doubts were encreased.

The Court was not ignorant of all this, and yet would not give themselves the least trouble to satisfy them, tho they had the greatest Interest in the world to do it.

The place of the Queens lying in, was so uncertain, and the management of the Birth so misterious, the sending away the *Princess of Denmark*, the Imprisoning the *Bishops* in the *Tower*, gave more then probable grounds to suspect an *Imposture*, and tho these be but presumptions, and have not the strength of a full Probation, yet they transfer a necessity of eliding them by clearer evidences.

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Thus our Religion, Liberties and Laws being ready to sink, when Gentle methods had proven ineffectual, when Addresses and Supplications, even from the most Loyal part of the Nation, were counted so many Acts of Treason, it was high time to recur to that remedy which nature seems to dictate to every individual in its own defence.

That zeal with which his *Hignness the Prince of Orange*, had ever espoused the Protestant Interest against all its Adverlaries, made the Nobility and Gentry of *England* unanimously pitch on him as the fittest person to be their deliverer, and both He and his *Princess* being so nearly interested in the Succession. No rational Man can blame him, for appearing in Arms and demanding satisfaction that way, which hitherto had been refus'd him. If the Remedy had been delayed, its more then probable, the greater part of the Nation had fallen a Sacrifice to *Poper*y and *Arbitrary Government*.

I shall conclude all with a short Reflection upon his *Majesties* leaving the Kingdom, and going for *France*, which Action alone hath done him more hurt, than all the rest together, for by Depriving Us of that *protection* which we might expect from his Government; He looses his Subjects from that *Allegiance* they swore unto, upon no other Condition then so long as they should enjoy so great a benefit: Neither can any who knows his *Majesties* Temper, impute his flight to Fear or Cowardise, but rather of his being conscious of a *certain guilt*, which did banish him from one of the greatest *Stations in the World*, and robbed him of that Bravery and Resolution that he is naturally endued with, and which tho he had wanted, yet Innocency had supported him, and made him outbrave all the Malicious Calumnies of his Enemies, with such a heroick constancie of mind, as seldom or never fails to come off *Victorious*.

The *Prince* had also acquainted him in his *Declaration*, that he had no other design in coming to *England*, than to referr all the Grievances of the Nation and his own Pretences to a *Free Parliament*; Neither the King nor any man else, could ever accuse this Prince with the least breach of promise: And tho he had been wanting in that Reverence, that is due to the Character of an *Uncle* and *Father in Law*, yet the Princes own Interest had secured the King from any harsh Treatment, for if any thing had been attempted against his Person, the



the Nations Eyes had been opened and would have seen clearly, that these specious pretences of Liberty and Property, were but so many Delusions, and such a Treatment certainly had deserved the greatest Resentment.

But if the King must needs go, can he find no place for shelter but *France*? Where so much Protestant Blood hath been so lately shed, with the greatest Cruelty and Barbarity that ever was heard; He cannot be ignorant that his Subjects have a natural Aversion for that Nation, and that his clois and constant Correspondence with its *Monarch*, gave them just Jealousies to apprehend, that there was more than an ordinary Friendship betwixt them, which was every day encreased, by his Copieing so near the methods that had been used in that Nation, for suppressing the *Protestant Religion* and establishing *Arbitrary Government*. And if the King have any hopes to reduce his Subjects by Invading them on the Head of a *French Army*, he will find them but ill grounded, for instead of reconciling them to him, so dangerous and improper a method would even alienate the hearts of his best Friends, and *Britain* would show it self as forward to Fight against *Papery and Tyranny*, as it was averse from giving proofs of its Courage, when it must needs have been fatal to Liberty and the Protestant Religion.

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